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1 A bill to be entitled
2 An act relating to monitoring the dispensing of controlled
3 substances; creating s. 893.055, F.S.; providing
4 definitions; requiring the Department of Health to
5 establish a comprehensive electronic system to monitor the
6 dispensing of certain controlled substances and to collect
7 biometric identifiers of recipients; requiring health care
8 practitioners and pharmacies who dispense certain
9 controlled substances to have an active and operational
10 biometric scanning device connected to a database and to
11 submit specified information to the database before
12 dispensing such substances; requiring the database to
13 assign a unique identifier to each prescription and to
14 provide specified information concerning any conflicting
15 or overlapping prescriptions to the prescribing
16 practitioner; providing exceptions to reporting
17 requirements; requiring that data be submitted in an
18 approved electronic format; providing for data retention;
19 requiring that data transmissions comply with privacy and
20 security laws; providing for rulemaking concerning data to
21 be reported and for reporting formats; providing criminal
22 penalties for violations; specifying an effective date for
23 criminal penalties; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Section 893.055, Florida Statutes, is created
28 to read:

29 893.055 Electronic system for monitoring the dispensing of
 30 certain controlled substances.--

31 (1) As used in this section and s. 893.0551, the term:

32 (a) "Biometric identifier" means an established unique
 33 form of biological identification readily compared and matched,
 34 such as a fingerprint, retinal scan, or other means of similar
 35 biometric identification approved by the department and
 36 authorized for retention in a database.

37 (b) "Biometric scan" means an electronic scan of a
 38 biometric identifier.

39 (c) "Biometric scanning device" means an electronic
 40 scanning device approved by the department that is designed to
 41 accurately capture a biometric identifier.

42 (d) "Database" means an electronic database, or network of
 43 databases, that is maintained by or contracted for by the
 44 department and that maintains and compares each biometric scan
 45 and the information contained therewith in conformity with the
 46 provisions of this section.

47 (e) "Health care practitioner" or "practitioner" means any
 48 practitioner subject to licensure or regulation by the
 49 department under chapter 458, chapter 459, chapter 461, or
 50 chapter 466.

51 (f) "Pharmacy" means a pharmacy subject to licensure or
 52 regulation by the department under chapter 465.

53 (2) By March 1, 2011, the department shall adopt an
 54 electronic monitoring system to monitor the collection of
 55 biometric identifiers and to record and store, in a secure
 56 database, the following:

57 (a) The dispensing of controlled substances listed in
58 Schedule II, Schedule III, and Schedule IV by health care
59 practitioners within the state.

60 (b) The dispensing or delivering of controlled substances
61 listed in Schedule II, Schedule III, and Schedule IV to
62 individuals in this state by any pharmacy licensed in this state
63 and by any health care practitioner registered with the
64 department as a dispensing practitioner.

65 (3) Any health care practitioner who dispenses or delivers
66 a controlled substance listed in Schedule II, Schedule III, or
67 Schedule IV must have in the practitioner's office an active and
68 operational biometric scanning device connected to the database.
69 Any such practitioner who dispenses or delivers such a
70 controlled substance to a person in this state must first obtain
71 a biometric scan of an approved biometric identifier of the
72 person through use of the biometric scanning device and submit
73 the same to the database.

74 (4) Any pharmacy that dispenses or delivers a prescription
75 for a controlled substance listed in Schedule II, Schedule III,
76 or Schedule IV must have in the pharmacy an active and
77 operational biometric scanning device connected to the database.
78 Any pharmacy that dispenses or delivers a prescription for such
79 a controlled substance to a person in this state must first
80 obtain a biometric scan of an approved biometric identifier of
81 the person through use of the biometric scanning device and
82 submit the same to the database.

83 (5) Prior to dispensing or delivering a controlled
84 substance listed in Schedule II, Schedule III, or Schedule IV to

85 a person in this state, every health care practitioner and
86 prescribing pharmacy must submit the following information to
87 the database:

88 (a) The biometric scan of the person's biometric
89 identifier.

90 (b) The full name and address of the prescribing
91 practitioner.

92 (c) The date of each prescription.

93 (d) The name of the controlled substance prescribed and
94 the strength, quantity, and directions for use thereof.

95 (6) After receiving the information required under
96 subsection (5), the database shall assign the prescription a
97 unique identifying number and shall immediately transmit the
98 following to the prescribing practitioner:

99 (a) The unique identifying number.

100 (b) The names of controlled substances listed in Schedule
101 II, Schedule III, and Schedule IV that have been prescribed in
102 connection with the biometric scan submitted that may conflict
103 with or overlap the prescribing practitioner's prescription.

104 (c) The full name and address of the practitioner whose
105 prescription may conflict with or overlap the prescribing
106 practitioner's prescription and the full name and address of the
107 practitioner or pharmacy that dispensed or delivered the
108 conflicting or overlapping prescription.

109 (7) Prior to dispensing or delivering a prescription for a
110 controlled substance listed in Schedule II, Schedule III, or
111 Schedule IV, the pharmacist or dispensing health care
112 practitioner shall submit the biometric scan of the person's

113 biometric identifier to the database and the database shall
114 immediately transmit the following to the pharmacy or dispensing
115 health care practitioner:

116 (a) The names of controlled substances listed in Schedule
117 II, Schedule III, and Schedule IV that have been prescribed in
118 connection with the biometric scan submitted that may conflict
119 with or overlap the prescription to be dispensed or delivered.

120 (b) The full name and address of the practitioner whose
121 prescription may conflict with or overlap the prescription to be
122 dispensed or delivered and the full name and address of the
123 practitioner or pharmacy that dispensed or delivered the
124 conflicting or overlapping prescription.

125 (8) The database shall not retain personal protected
126 health care information other than the biometric scans and the
127 prescription information provided to the database pursuant to
128 subsections (6) and (7). This section shall not preclude health
129 care practitioners and pharmacies from retaining personal
130 information on their patients that is collected and maintained
131 in their regular course of business in compliance with
132 applicable law.

133 (9) This section does not apply to controlled substances
134 listed in Schedule II, Schedule III, or Schedule IV:

135 (a) Administered by a health care practitioner directly to
136 his or her patient;

137 (b) Dispensed or delivered by a health care practitioner
138 authorized to prescribe controlled substances directly to a
139 patient and limited to an amount adequate to treat the patient
140 for a period of no more than 72 hours;

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141 (c) Dispensed or delivered by a health care practitioner
142 or a pharmacist to an inpatient of a facility that holds an
143 institutional pharmacy permit;

144 (d) Ordered from an institutional pharmacy licensed under
145 s. 465.019 in accordance with internal policy and procedure for
146 controlled substances listed in Schedule II, Schedule III, and
147 Schedule IV;

148 (e) Dispensed or delivered by a pharmacist or administered
149 by a health care practitioner to a patient or resident receiving
150 care from a hospital, nursing home, assisted living facility,
151 home health care agency, hospice, or intermediate care facility
152 for the developmentally disabled that is licensed in this state;

153 (f) Prescribed by a health care practitioner for a patient
154 younger than 16 years of age;

155 (g) Prescribed or dispensed pursuant to rule adopted by
156 the department; or

157 (h) Administered, prescribed, dispensed, or delivered
158 under circumstances in which the pharmacist or practitioner
159 cannot, in good faith, comply with the provisions of this
160 section.

161 (10) A dispensing practitioner or pharmacist who dispenses
162 or delivers a controlled substance listed in Schedule II,
163 Schedule III, or Schedule IV shall submit the information
164 required under this section to the department, or any person or
165 agency authorized by the department, in an electronic format
166 approved by the department. The department, or the person or
167 agency authorized by the department, shall maintain the
168 information for no longer than 24 months from the date of

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169 receipt and shall thereafter expunge the information unless
170 otherwise directed by a court of competent jurisdiction.

171 (11) All transmissions required by this section must
172 comply with relevant federal and state privacy and security
173 laws.

174 (12) By March 1, 2010, the department, together with the
175 Board of Pharmacy and the Board of Medicine, shall adopt rules
176 pursuant to ss. 120.536(1) and 120.54 governing the
177 administration of this section, including rules governing access
178 to the database by practitioners and pharmacists and
179 implementing procedures to be employed when a biometric scanning
180 device is inoperable or the database is inaccessible.

181 (13) Any person who knowingly fails to comply with any
182 provision of this section commits a misdemeanor of the first
183 degree, punishable as provided in s. 775.082 or s. 775.083.

184 Section 2. The penalties in s. 893.055(13), Florida
185 Statutes, as created by this act, shall take effect March 1,
186 2011, or upon the adoption of the rules pursuant to s.
187 893.055(12), Florida Statutes, as created by this act, whichever
188 occurs first, and shall apply to acts or omissions on or after
189 that date.

190 Section 3. This act shall take effect July 1, 2009.